

1 JOHN W. RALLS (CA Bar No. 148233)
jralls@thelen.com
2 JOHN A. FOUST (CA Bar No. 218824)
jfoust@thelen.com
3 JOANNA ROSEN (CA Bar No. 244943)
jrosen@thelen.com
4 THELEN REID BROWN RAYSMAN &
STEINER LLP
5 101 Second Street, Suite 1800
San Francisco, CA 94105
6 Tel. 415.371.1200 // Fax 415.371.1211

7 PATRICK S. HALLINAN
(CA Bar No. 33838)
8 butchhallinan@hotmail.com
KENNETH H. WINE (CA Bar No. 142385)
9 kenwine@hotmail.com
HALLINAN & WINE
10 Law Chambers Building, 345 Franklin Street
San Francisco, CA 94102
11 Tel. 415.621.2400 // Fax 415.575.9930

12 Attorneys for Defendants, Counter-Claimants
and Third Party Complainants
13 DICK/MORGANTI, DICK CORPORATION,
THE MORGANTI GROUP, AMERICAN
14 CASUALTY COMPANY OF READING, PA
and NATIONAL UNION FIRE INSURANCE
15 COMPANY OF PITTSBURGH, PA

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA—SAN FRANCISCO DIVISION

18 UNITED STATES OF AMERICA for the Use and
Benefit of WEBCOR CONSTRUCTION, INC. dba
19 WEBCOR BUILDERS, and WEBCOR
20 CONSTRUCTION, INC. dba WEBCOR
BUILDERS,

21 Plaintiffs,

22 vs.

23 DICK/MORGANTI, a joint venture, DICK
24 CORPORATION, THE MORGANTI GROUP,
AMERICAN CASUALTY COMPANY OF
25 READING, PA, NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA,
26 and DOES 1 through 10, inclusive,

27 Defendants.

RICHARD T. BOWLES (#46234)
rbowles@bowlesverna.com
KENNETH G. JONES (#196868)
kjones@bowlesverna.com
WILLIAM T. NAGLE (#180162)
wnagle@bowlesverna.com
MICHAEL P. CONNOLLY (#238478)
monnolly@bowlesverna.com
BOWLES & VERA LLP
2121 N. California Boulevard, Suite 875
Walnut Creek, California 94596
Tel. 925.935.3300 // Fax 925.935.0371

Attorneys for Plaintiff WEBCOR
CONSTRUCTION, INC. dba WEBCOR
BUILDERS

Case No.: 3:07-CV-02564-CRB

**JOINT CASE MANAGEMENT
STATEMENT OF
DICK/MORGANTI, DICK
CORPORATION, THE
MORGANTI GROUP,
AMERICAN CASUALTY
COMPANY OF READING, PA,
NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA AND WEBCOR
CONSTRUCTION, INC.**

Date: August 29, 2008
Time: 10:00 a.m.
Place: Courtroom 8

Before: Hon. Charles R. Breyer

1 AND RELATED COUNTER-CLAIMS AND
2 THIRD PARTY CLAIMS.

3
4 Defendants, Counter-Claimants and Third Party Complainants DICK/MORGANTI, DICK
5 CORPORATION, THE MORGANTI GROUP, AMERICAN CASUALTY COMPANY OF
6 READING, PA and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH,
7 PA (“D/M”) and Plaintiff WEBCOR CONSTRUCTION, INC. dba WEBCOR BUILDERS
8 (“Webcor”) respectfully submit this Joint Case Management Statement pursuant to Civil
9 Rule 16-10(d).¹

10 The status of this action is linked to the ongoing efforts to prosecute claims arising out of
11 the San Francisco Federal Building project (“Project”) against the General Services
12 Administration (“GSA”). As noted in prior filings, there are two steps in bringing these claims
13 against the GSA. The first step is the presentation of certified claims, in exact dollar amounts, to
14 the GSA’s contracting officer with a request for final decision. The second step is to appeal any
15 denials of claims by the contracting officer to the Civilian Board of Contract Appeals (“CBCA”).

16 In 2008, D/M (with the aid of its subcontractors) accomplished these two steps for six
17 claims, and there are currently six appeals arising out of the Project pending before the CBCA
18 (Appeal Nos. 420, 450, 451, 810, 818 and 1307). These six appeals have been consolidated by the
19 CBCA and are pending before Administrative Judge Borwick.

20 There is also a seventh claim—D/M’s “global/omnibus” claim—that is pending before the
21 GSA’s Contracting Officer for the Project, and is not yet the subject of an appeal to the CBCA.
22 This global/omnibus claim includes pass-through claims of Boyett, Rosendin Electric, Webcor,
23 Bay Area Reinforcing, Permasteelisa Group, ISEC, Marelich Mechanical, Performance
24 Contracting Inc. and T&M Manufacturing. The entitlement portion of this claim was submitted to
25 the Contracting Officer in November 2007. In April 2008, D/M submitted the damages portion of
26 the global/omnibus claim, which included all of the damages information D/M was itself able to

27 ¹ Counsel for Rosendin Electric, Performance Contracting, and Permasteelisa Group were shown a
28 draft of this statement but declined to join.

1 certify to the GSA, including millions of dollars of open and disputed change order requests on
2 behalf of D/M's subcontractors. D/M's damages statement also included the individual damages
3 claims of Webcor, Bay Area Reinforcing and Boyett, but did not include the damages information
4 for each subcontractor. Although D/M would have preferred to submit its global/omnibus
5 damages statement with the claims of all subcontractors quantified and certified, it did not have all
6 of the necessary information to do so by April 2008, and so in the interest of expediting resolution,
7 it submitted all of the properly certified damages information it had at the time.

8 D/M and its subcontractors have been working to finalize the pricing of all remaining
9 elements of the claims arising out of the Project, with a goal to finalize pricing and submit final
10 pricing to the GSA by the end of September 2008. D/M has held telephone and face-to-face
11 meetings with representatives of all of these subcontractors: Webcor, Rosendin, Marelich,
12 Permasteelisa, PCI and T&M. D/M has further meetings or conference calls scheduled with these
13 subcontractors. At this time, damages quantification deserves a serious effort (and, among other
14 steps, D/M has brought on the assistance of additional accounting support). Unless or until D/M
15 has claims in exact dollar amounts, and that have been properly certified (and that D/M is able to
16 satisfy itself are properly certified), D/M cannot submit those claims to the Contracting Officer,
17 which is a prerequisite to the filing of appeals with the Board. *See Metric Constr. Co., v. U.S.*, 14
18 Cl. Ct. 177, 179 (1988).²

19 Although the global/omnibus claim is not yet the subject of an appeal, D/M has
20 nonetheless advised Judge Borwick that such a claim is almost certainly to be the subject of an
21 additional appeal. A status conference was held July 22, 2008, to address the matter. D/M's
22 counsel used that status conference as an opportunity to make progress in the scheduling of the
23 anticipated appeal arising out of the "global/omnibus" claim. At that conference, D/M's counsel
24 raised the issue of scheduling the forthcoming appeal of the global claim. Over the GSA's
25 objections, D/M was successful in getting the CBCA to issue a date certain—January 12, 2009—

26 ² In this respect, government contract claims pose a significant "up front" burden on the contractor
27 claimants. The kind of damages information and specificity that in civil litigation would be
28 presented during the course of the litigation (and frequently not until expert discovery) must be
submitted in the first instance.

1 on which a scheduling conference for all of the claims arising out of the Project would be
2 conducted.³ This was further confirmed by the CBCA at a subsequent status conference held on
3 August 20, 2008 in relation to the appeal of Webcor's major claims (Appeal No. 1307), at which
4 the CBCA adopted the same scheduling conference for January 12, 2009.

5 D/M is of the view that once the remaining elements of the claims are quantified and
6 submitted, there will be few claims remaining between the parties to this litigation that have not
7 been passed through to the GSA. To date, D/M has entered into agreements resolving outstanding
8 issues with Bay Area Reinforcing, Boyett, Marelich, T&M and other subcontractors not a party to
9 this action (e.g., ISEC). After the remaining elements of the claims are quantified and submitted,
10 D/M is willing to mediate those remaining claims, if the parties are not able to not work out the
11 issues themselves after a reasonable time.

12 In addition to giving claims pricing a major effort, D/M and its subcontractors are taking
13 other steps to move the claims forward. For instance, counsel for D/M is in communication with
14 counsel for the GSA about ADR procedures (which Judge Borwick has encouraged). In addition,
15 the GSA is, at D/M's urging and with the subcontractors' cooperation, currently conducting audits
16 of the various subcontractors who have submitted claims. D/M has also added to its legal team
17 attorneys from the Washington D.C. office of Thelen Reid Brown Raysman and Steiner LLP, who
18 specialize in prosecuting construction claims against the federal government. These attorneys
19 bring not only additional resources, but also relationships with the GSA attorneys who handle
20 claims of this nature, which should help to avoid procedural delays.

21 With regard to PCI's claim, D/M's counsel and PCI's counsel have recently discussed the
22 issues. Counsel have agreed that their respective clients, at the project management level, should
23 discuss the pricing of various change order claims with the goal of finalizing pricing. In addition,
24 D/M and PCI are set to discuss the more "global" issues, including how to finalize claim pricing
25 and how to push things forward with the CBCA, on September 8, 2008.

26 ³ In addition, at the July 22 status conference before the CBCA, D/M raised the issue of interest,
27 an issue of concern to Webcor and others. Contrary to the suggestion by the GSA's counsel that
28 interest should not run until all of the claims were submitted, Judge Borwick ruled that interest
would run from the date claims were submitted in certified form to the GSA.

Given the current status, and the current goal of finalizing pricing and claims submissions, D/M and Webcor respectfully suggest that the status conference be rescheduled for October 2008.

Dated: August 26, 2008

THELEN REID BROWN RAYSMAN & STEINER LLP

/s/

By

John W. Ralls
Attorneys for Defendants, Counter-Claimants and
Third Party Complainants DICK/MORGANTI,
DICK CORPORATION, THE MORGANTI
GROUP, AMERICAN CASUALTY COMPANY OF
READING, PA, and NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA

Dated: August 26, 2008

BOWLES & VERNA LLP

/s/

By

Kenneth G. Jones
Attorneys for Plaintiff WEBCOR
CONSTRUCTION, INC. dba WEBCOR BUILDERS